



COMPLIANCE CONVICTION

Ministry of the Environment
Policy 05-02

Including a Schedule of Abatement Tools
Available under MOE Legislation

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COMPLIANCE
Policy 05-02

Ministry of the Environment
Compliance Policy

HAZARDOUS CONTAMINANTS
COORDINATION BRANCH
135 ST. CLAIR AVENUE WEST
TORONTO, ONTARIO M4V 1P5

Replacing the former Abatement Policies (05-02 and 05-03)
and the Enforcement Policy (05-05)

Including a Schedule of Abatement Tools
available under MOE legislation

July 10, 1991

COMPLIANCE
Policy 05-02

the *Environmental Protection Act*
the *Ontario Water Resources Act*
the *Pesticides Act*
the *Environmental Assessment Act*
the *Provincial Offences Act*

This policy documents the Ministry's approach to achieving province-wide compliance with its legislation and regulations, for the protection and improvement of the environment. The policy describes how the Ministry uses both abatement and enforcement to achieve compliance, and confirms that at any stage of the abatement process, the Ministry may pursue enforcement action as a means of addressing violations, or as a first step to achieving compliance or to enforce its requirements. It sets out:

- the abatement tools available under the Ministry's legislation;
- the principles governing the Ministry's enforcement of Ontario's environmental laws; and
- the means by which the Ministry provides public notification and consultation respecting its abatement and enforcement activities.

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Definitions

Action Request Notice

A printed form, completed by Ministry staff and issued to the person responsible for a source of pollution, which requests that the person take measures to reduce the pollution or face further action under the Ministry's legislation.

Abatement

Measures to bring about compliance, usually focused directly on the prevention, reduction and elimination of pollution.

Abatement Tools

The tools available to Ministry staff for abatement.

They include:

- control documents;
- voluntary abatement;
- warnings;

as listed and defined in Schedule 1.

Compliance

A state achieved by adhering to the legislative and regulatory requirements of the Ontario Ministry of the Environment. These requirements cover a wide range of activities, from the prevention, reduction and elimination of pollution, to the obtaining of approvals and licences, to the completion of routine paperwork and the filing of reports.

Control Document

A document which is authorized by statute, binding upon the recipient, and directly enforceable by prosecution.

Director

Any person appointed by the Minister as a Director for the purposes of the legislation and regulations or any part thereof. Also includes any person authorized to issue a Control Document, such as the Minister for a Section 85 Order under the *Environmental Protection Act* or a Provincial Officer for a Stop Order under Section 20 of the *Pesticides Act*.

Enforcement

In general, this entails an investigation by staff of Investigations and Enforcement Branch, with a view to prosecution or other action to compel compliance or punish non-compliance with the legislative and regulatory requirements of the Ontario Ministry of the Environment.

Occurrence Report

A document, prepared by Ministry staff, in which situations which may require abatement or enforcement are reported and recommendations for action identified.

Person Responsible

- As defined in the *Environmental Protection Act* means the owner, or the person in occupation or having the charge, management or control of a source of contaminant and, where the specific Control Document (under the *Environmental Protection Act* only) may be directed either to the current person responsible or to a previous owner, occupant or person in control, includes such additional persons (Schedule 1 provides details for each Control Document);

- As defined in the *Pesticides Act*, means when used with reference to a pesticide, substance or thing,

(1) the owner,

(2) the person having the charge, management or control of the handling, storage, use, disposal, transportation or display, or

(3) the person having the charge, management or control, of the pesticide, substance or thing;

- For the purposes of the *Environmental Assessment Act*, means the proponent, defined as a person who

(1) carries out or proposes to carry out an undertaking, or

(2) is the owner or person having charge, management or control of an undertaking;

- For the purposes of the *Ontario Water Resources Act*, has a meaning corresponding to those contained in the other three Acts.

Program Approval

A document describing a schedule of voluntary abatement activity which has been developed by the person responsible and approved by the Director. This is a form of voluntary abatement specifically authorized by statute (EPA, Sections 9 and 10).

Non-compliance with a Program Approval cannot be directly enforced by prosecution.

Provincial Officer

Means a person designated by the Minister as a Provincial Officer for the purposes of the administration of any Act administered by the Minister of the Environment.

When a Ministry employee is designated a Provincial Officer, the designation is usually for the purposes of all of:

- the *Environmental Protection Act*;
- the *Ontario Water Resources Act*;
- the *Pesticides Act*;
- the *Environmental Assessment Act*;

and all the regulations made under them, and includes designation as a Provincial Offences Officer under the *Provincial Offences Act*. A Provincial Offences Officer is empowered to issue Offence Notices ("tickets") (see s. 18.0).

Provincial Officer's Report	A report, prepared under Section 6 of the <i>Environmental Protection Act</i> , which documents a contravention of the Act and its regulations and must be prepared by a Provincial Officer before a Control Order can be issued under the Act.
Public	Any person or group, including the local MPP, the municipality, industry, community, professional and corporate interest groups, or individuals.
Public Consultation	A process involving interactive or two-way communication between the Ministry and the public, through which both become informed about different perspectives on issues and proposals, providing the public with the opportunity to influence decisions to be made by the Ministry.
Public Notification	A process through which the Ministry provides relevant and timely information to the public.
Violation	A contravention of any Act or regulation administered by the Ministry of the Environment.
Violation Notice	A printed form, completed and signed by a Provincial Officer, which provides notice to the person responsible that a violation has been observed.

1.0 Identification of Non-Compliance Situations

The Ministry, most often Abatement Staff in the Ministry's Regional Offices, will identify non-compliance situations through its own routine inspections or in response to information or complaints received.

2.0 Evaluation

A situation so identified will be promptly evaluated to determine whether it constitutes:

2.1 Emergency or Spill

An emergency or a spill as defined in Policy 13-01 entitled Role of the Ministry in Emergencies and Spills

- the Ministry will respond in accordance with Policy 13-01;
- if abatement is required to prevent a recurrence of the emergency or spill, the Ministry will follow the procedures described in this policy.

2.2 Immediate Danger

A situation which is not an emergency or a spill as defined in Policy 13-01 but which poses an immediate danger to human life or health or to property such that immediate curtailment is warranted

- the Ministry will apply the appropriate abatement tool, such as a Stop Order, if immediate voluntary curtailment does not occur.

(see Schedule 1 - several types of Control Documents are specifically designed for use in an emergency and a number of others can be appropriately written for use in an urgent situation)

2.3 Potential Environmental Hazard

A situation believed to have had an adverse environmental impact and/or to pose an immediate danger to human life or health or to property, but the nature and extent of which are unknown or uncertain (e.g., buried hazardous wastes).

The Ministry will promptly initiate appropriate action(s) to determine the nature and extent of the situation in sufficient detail to permit development of an abatement program. Using appropriate abatement tools, the Ministry will also implement the identified abatement program to the extent necessary to stabilize the situation and curtail any immediate danger. Where feasible, the Ministry will then proceed to apply the appropriate abatement tool(s) to require the responsible parties to continue implementation of the identified abatement program.

2.4 Other Non-Compliance

A situation other than an emergency, a spill or an immediate danger, which requires the adoption by the person responsible of measures to bring about compliance, including the prevention, reduction and elimination of pollution; or other non-compliance situations which may warrant enforcement action.

- the Ministry will act in accordance with this policy.

3.0 Documentation

All spills, complaints and other situations which may require abatement or enforcement action, including all violations, shall be fully documented in an Occurrence Report. Where the investigating officer is of the opinion that a

violation has occurred, the original Occurrence Report shall be given to the Regional Supervisor, Investigations and Enforcement Branch.

4.0 Consider Enforcement Action

When an Occurrence Report is given to the Regional Supervisor, Investigations and Enforcement Branch, staff of Investigations and Enforcement Branch shall consider the factors contained in Sections 15 and 16 of this policy to arrive at an informed judgment as to whether enforcement action should be undertaken.

Whether enforcement action is recommended or undertaken, the Ministry will act in accordance with this policy to require abatement.

5.0 Voluntary Abatement

Every situation requiring abatement should be assessed to determine whether compliance can be satisfactorily achieved through a program of voluntary abatement.

5.1 Determination Whether Voluntary Abatement Appropriate

Voluntary abatement may not be appropriate in a situation to which any of the following criteria are applicable:

- the non-compliance poses a significant risk to, or will have an adverse effect on, human beings or the environment;
- the pollution emitted as a result of the non-compliance is a serious obstacle to the achievement of the Ministry's

air quality and water quality objectives;

- the person responsible has an unsatisfactory compliance record;
- the person responsible has demonstrated, and continues to demonstrate, a negative attitude to pollution control;
- the non-compliance appears to have been deliberate;
- the non-compliance appears to have been the result of negligence.

5.2 Program Approval

Use of a Program Approval for voluntary abatement should be considered only in those situations where preventive measures are needed, and not for the abatement of pollution that is actually occurring.

5.3 Request for Voluntary Abatement

Where voluntary abatement is considered appropriate, the Ministry may make an oral or written request to the person responsible that a voluntary abatement program be undertaken within a specified time period.

5.4 Documentation of Request

Every Ministry request for voluntary abatement shall be documented in an Occurrence Report.

5.5 Form of Request

A Ministry request for voluntary abatement may be in the form of, or accompanied by, a written warning using one of the following:

- an Action Request Notice;
- a Letter;
- a Violation Notice.

Such a request shall specify a date (not in excess of 30 calendar days from the date of the Ministry's request for voluntary abatement) by which the person responsible must respond.

5.6 Negative Response If the Ministry's request for voluntary abatement receives a negative response, or is ignored, the Ministry shall proceed in accordance with Section 6 of this policy.

5.7 Voluntary Abatement--Schedule

Upon receipt of a satisfactory response to a request for voluntary abatement, the Ministry will require the person responsible to provide, within a timeframe to be specified by the Ministry, a detailed schedule for abatement satisfactory to the Ministry. The schedule shall comprise a comprehensive description of the work to be performed, including the construction/alteration of facilities and the installation/modification of equipment, and shall also include a projected completion date, together with intermediate steps against which the Ministry shall regularly measure and document the progress of the work.

In requesting voluntary abatement and in acknowledging, to the extent necessary, that a proposal for voluntary abatement seems adequate to correct the problem, staff must scrupulously avoid giving any assurance that the carrying out of voluntary abatement will affect the determination of whether to prosecute for on-going or past non-compliance.

5.7.1 Deviation from Schedule

Where voluntary abatement is not proceeding in accordance with the schedule, the Ministry may give

written warning to the person responsible by means of one of the following:

- an Action Request Notice;
- a Letter;
- a Violation Notice.

The Ministry may issue not more than two written warnings before taking further action to bring about abatement in accordance with Section 6 of this policy.

5.7.2 Time Limit Where Progress Unsatisfactory

The length of time that elapses before the Ministry issues written warnings or decides to take further action respecting unsatisfactory progress on a voluntary abatement program will vary depending on the type of abatement involved, the extent to which the rate of progress deviates from the schedule, the reason for any deviation and the attitude of the person responsible.

In no case, however, will the Ministry tolerate unsatisfactory progress on a voluntary abatement program beyond 180 calendar days.

It should be understood that the 180 days is a maximum; the Ministry may take further action at any time prior to the expiry of the 180 day period where progress is clearly unsatisfactory.

6.0 Mandatory Abatement

Where a request for voluntary abatement:

- (a) is considered by the Ministry to be inappropriate; or

(b) does not meet with a positive response by the person responsible; or

(c) does not result in satisfactory progress toward abatement,

the Ministry shall proceed with the development and application of a Control Document.

When any of the circumstances described in this section arise, the situation shall be fully documented in an Occurrence Report and a copy shall be given to Investigations and Enforcement Branch. Staff of Investigations and Enforcement Branch shall consider the factors contained in Sections 15 and 16 of this policy to arrive at an informed judgment as to whether enforcement action should be pursued.

7.0 Authority to Proceed

With the exception of a Control Document to be issued by the Minister, the Director responsible for developing and issuing a Control Document or Program Approval in accordance with this policy may proceed to do so unless, in the opinion of the Branch/Regional Director, it is determined that the nature, extent and severity of the problem, and/or the level of public concern, are such that the responsible Division Head should be consulted. In all other cases, the responsible Division Head should be notified.

When the use of a Control Document to be issued by the Minister is considered appropriate, the Director shall consult the responsible Division Head for the purpose of obtaining the Minister's approval to proceed.

8.0 Preparation of Control Documents or Program Approvals

In preparing a Control Document or Program Approval, the Director shall consider the abatement tools available, as described in Schedule 1, together with:

- the factors described in Section 5.1;
- the Provincial Officer's Report (a mandatory requirement for Control Orders under Section 6, EPA; may also be useful in support of other Control Documents);
- the advice of the Legal Services Branch;
- the confidentiality provisions of the Ministry's legislation, and the *Freedom of Information and Protection of Privacy Act, 1987*;
- the results of any economic analyses undertaken in accordance with Policy 02-01 entitled Guidelines for Economic Analyses of Private Sector Pollution Abatement and Environmental Protection Measures; and
- the comments received from the public (see Section 9 - Public Notification and Consultation).

8.1 Compliance Schedule

All Control Documents and Program Approvals should include a schedule for compliance, including intermediate steps and, where appropriate, an expiry date.

8.2 Change in Status All Control Documents and Program Approvals should include a requirement that the person responsible report in writing to the Director any significant changes in the operation, emissions, discharges or legal status of the facility or operation to which the Control Document or Program Approval applies.

8.3 Control Documents Requiring Installation of Pollution Control Equipment

Control Documents for the installation of pollution control equipment should be prepared such that they:

- (a) require intermediate steps to be completed in a timely and regular fashion;
- (b) require the installation and operation of Ministry-approved pollution control equipment within a specified time-frame;
- (c) require that pollution control equipment, once installed, is properly maintained and operated;
- (d) require that pollution control equipment be upgraded or modified as required to achieve compliance;
- (e) specify the emission, discharge, and monitoring requirements that must be met;
- (f) include procedures to be followed during start-up, shutdown and breakdown, maintenance and decommissioning periods;
- (g) require that once equipment is installed as approved, the person responsible so certifies in writing; and

- (h) require that once installed equipment is operating as required, the person responsible so certifies in writing.

8.4 Responsibility for Emissions and Discharges

It is the duty of the person responsible to ensure the control of emissions and discharges at all times.

The fact that a facility is undergoing alteration, installation, start-up, shutdown, breakdown, maintenance or decommissioning does not absolve the person responsible from this duty.

8.5 Financial Constraints

Financial constraints on the part of the person responsible will not be accepted as a reason for non-compliance with the requirements of a Control Document, but may be considered by the Director, in consultation with the responsible Division Head, in determining the compliance schedule contained in a Control Document.

8.6 Financial Assurance

Financial Assurance may be imposed by the Ministry to ensure that recipients of Control Documents and Program Approvals issued under the *Environmental Protection Act* or the *Ontario Water Resources Act* comply in a timely manner with the requirements thereof.

Reference should be made to Policy 02-03 entitled Financial Assurance.

PREFACE TO SECTIONS 9, 10 AND 11:

Certificates of Approval and similar authorizing documents such as licences and permits are included in Schedule 1 (Abatement Tools), under the heading CONTROL DOCUMENT - Approval (used to achieve abatement). Sections 9, 10 and 11, however, do not apply to Certificates of Approval and similar authorizing documents.

As noted in the Ministry's Public Consultation Policy (No. 16-09), criteria will be established to identify the special circumstances where a public consultation program should be carried out on these documents.

Legal Note: Appropriate public consultation must be carefully considered whenever a Control Document (including a licence or certificate of approval, etc.) is to be issued. In a recent case, known as Matthews and Mangialardi (Dec. 1990), Madame Justice Marie Corbett found that, because the decision of the Director may affect the interests and property rights of abutting and neighbouring landowners, they are entitled to notice and to be given an opportunity to be heard. While she was dealing with issuance of an approval, some consideration should be given to this sort of reasoning when contemplating use of a Control Document.

9.0 Public Notification and Consultation

The Director may notify and consult the public during the development of Control Documents and Program Approvals, and will always give notification to the public of the issuance of such items.

The minimum form of public notification will be the provision of copies of the Control Document or Program Approval to the local MPP and to the Clerks of the appropriate local municipality and upper-tier municipality. The Director will also provide such additional notification to the public as he/she considers appropriate.

The extent of consultation will vary in accordance with circumstances and as deemed appropriate by the Director having regard to the factors listed in Section 9.1. Activities may range from individual contact with local

residents, to a notice in the local newspaper, to a public meeting.

9.1 Determination of Extent

The Director will consider the following factors in determining the extent of the public notification and consultation and the appropriate means by which it should be undertaken:

- whether pollution is actually occurring;
- the nature, extent and duration of the pollution;
- the area of impact of the pollution;
- the extent and level of local interest and concern; and
- the magnitude, probable duration and potential local impact of the abatement program.

9.2 Selection of Appropriate Means

Having considered the factors listed in Section 9.1, the Director will select one or more of the following as the appropriate means of public notification/consultation:

- (a) news release
- (b) local newspaper advertisement
- (c) door-to-door flier
- (d) letter to residents
- (e) letter to local MPP and Clerks of local municipality and upper-tier municipality
- (f) individual contact with residents
- (g) meeting(s) with concerned group(s)
- (h) open house sessions
- (i) public meeting(s)
- (j) meeting(s) with municipal officials.

The above list is not exhaustive. Staff is advised to consult the Ministry's Communications Branch for advice respecting the wide variety of formal and informal means that are available for effective public consultation.

9.3 Public Consultation on Draft Control Document or Program Approval

Where the Director, having considered the factors listed in Section 9.1, determines that public consultation should occur respecting the contents of a draft Control Document or Program Approval, he/she will:

- (a) release the draft Control Document or Program Approval to the public and invite comment within a clearly specified time-frame;
- (b) undertake additional consultation activities, as appropriate using the means listed in Section 9.2;
- (c) at the expiry of the specified comment period, take the public comment into account in finalizing the Control Document or Program Approval;
- (d) provide notification to the public of the issuance of the Control Document or Program Approval by means which correspond to the consultation activities previously undertaken; and
- (e) send a copy of the final Control Document or Program Approval, as issued to the person responsible, to the local MPP and the Clerks of the local municipality and upper-tier municipality, and to:
 - the responsible Division Head;

- the Director, Legal Services Branch;
- the Director, Investigations and Enforcement Branch; and
- those who submitted comments.

9.3.1 Public Consultation Prior to draft of Control Document or Program Approval

Where the Director, having considered the factors listed in Section 9.1, determines that public notification and consultation should occur before the Control Document or Program Approval is drafted, he/she will:

- (a) provide notification to the public that a situation exists which requires abatement;
- (b) make available to the public all information respecting the situation, together with any proposals for abatement received or prepared by the Ministry, subject only to the confidentiality provisions of the Ministry's legislation and the *Freedom of Information and Protection of Privacy Act*;
- (c) invite the public to comment, clearly specifying the period of time to be allowed for the receipt of such comment;
- (d) undertake additional consultation activities as appropriate, using the means listed in Section 9.2;
- (e) at the expiry of the public comment period, take the public comments into account in drafting the appropriate Control Document or Program Approval;
- (f) release the draft Control Document or Program Approval to the public and invite comment within a clearly specified time-frame;

- (g) undertake additional consultation activities, as appropriate;
- (h) at the expiry of the specified comment period, take the public comment into account in finalizing the Control Document or Program Approval;
- (i) provide notification to the public of the issuance of the Control Document or Program Approval by means which correspond to the consultation activities previously undertaken; and
- (j) send a copy of the final Control Document or Program Approval, as issued to the person responsible, to the local MPP and the Clerks of the local municipality and upper-tier municipality, and to:
 - the responsible Division Head;
 - the Director, Legal Services Branch;
 - the Director, Investigations and Enforcement Branch; and
 - those who submitted comments.

9.4 Notice of Public Meeting

The Director shall always provide the local MPP and the Clerks of the local municipality and upper-tier municipality with advance notice of any public meeting respecting Control Documents or Program Approvals.

9.5 Abatement of Immediate Danger

Where an immediate danger exists (as described in Section 2.2) prompt notification will be provided to the public by such means as the Director considers appropriate.

The Director will also send to the local MPP and to the Clerks of the local municipality and upper-tier municipality, a copy of any Control Document issued for abatement of an immediate danger.

In this connection, it should be noted that, pursuant to the *Freedom of Information and Protection of Privacy Act*, the Minister, notwithstanding any other provision of that Act, is required as soon as practicable, to disclose any information to the public or persons affected if he/she has reasonable and probable grounds to believe that it is in the public interest to do so and that the information reveals a grave environmental, health or safety hazard to the public. (*Freedom of Information and Protection of Privacy Act*, 1987, Part II: Access to Records, Section 11).

10.0 Notice of Intent to Issue a Control Document

The Director shall provide to the person responsible, a notice of his/her intention to issue a Control Document, in accordance with the applicable legislation.

Where the legislation does not provide for a notice of intention, the Director shall give reasonable advance notice, in writing, to the person responsible unless issuance of the Control Document is considered a matter of urgency.

The Director shall also provide such notification to the public as he/she considers appropriate.

11.0 Amendments

Public notification or consultation shall also be undertaken in accordance with Section 9 of this

Policy, respecting any proposed amendments to a Control Document or Program Approval, unless the proposed amendments:

- will not alter the original compliance dates;
- will not affect the original intent or planned results; and
- will not result in any increase in the emission or discharge of pollutants from the facility/operation to which the Control Document or Program Approval applies.

11.1 Notice of Amendments

The local MPP and the Clerks of the local municipality and upper-tier municipality shall be notified of all amendments and supplied with copies.

The Director will also provide such additional notification to the public as he/she considers appropriate.

12.0 Documents Available for Inspection

Copies of Control Documents and Program Approvals shall be made available by the Ministry for public inspection, upon request.

13.0 Compliance with Control Documents

Every Control Document will be reviewed regularly by the Regional Director to assess compliance as indicated by the results of regular inspection, testing and monitoring consistent with administrative priorities and the nature of the facility to which the Control Document applies.

14.0 Enforcement of Control Documents

Where the person responsible does not meet the requirements and conditions of a Control Document, the situation shall be documented in an Occurrence Report and referred to the Regional Supervisor, Investigations and Enforcement Branch for consideration of enforcement action in accordance with Sections 15 and 16 of this policy.

15.0 Enforcement

15.1 Matter Referred to IEB
(Investigations and Enforcement Branch)

When the IEB Supervisor receives an Occurrence Report of a violation in a Ministry Region, he or she will review the Occurrence Report and, either,

a) having discussed the matter with the District Officer, decide that further investigation is not

warranted, set out the reasons in a supplementary Occurrence Report and bring the matter to a conclusion, or

b) decide that further investigation is warranted and assign an IEB Investigator to the matter, for the purpose of conducting an investigation with a view to prosecution.

15.2 IEB Investigation

Where an IEB Investigator has carried out an investigation, he or she will decide, in consultation with his or her supervisor, whether to recommend the initiation of a prosecution.

Where the IEB Investigator, in consultation with his or her supervisor, and after making contact with and giving due consideration to any additional information provided by the District Officer, decides that the initiation of a prosecution is not warranted, the IEB Investigator will set out the reasons in a supplementary Occurrence Report, give a copy to the District Officer, and close the file.

15.3 Prosecution Brief

Where the IEB Investigator recommends the initiation of a prosecution, he or she will prepare a written brief, and submit it to the IEB Supervisor (copy of the synopsis from the brief to Regional Staff).

The IEB Supervisor will review the brief and forward it to the Director of Investigations and Enforcement Branch.

The Director of Investigations and Enforcement Branch will review the brief and forward it to the Director of Legal Services Branch.

15.4 Legal Services Branch

The Director of Legal Services Branch will consult with staff lawyers as to whether the evidence obtained is adequate and as to whether prosecution would be in the interests of the administration of justice. Additional consultation may take place with staff of the Ministry of the Attorney General where appropriate.

The Director of Investigations and Enforcement Branch and the Director of Legal Services Branch will discuss the matter and will jointly decide whether or not to proceed.

15.5 Prosecution Briefing

Senior management of the Ministry will be informed of the decision. The Minister is not involved in discussions relating to the laying of charges or the ongoing conduct of prosecutions.

15.6 Attorney General

Ultimate authority respecting whether a prosecution proceeds or not, rests with the Attorney General, in his or her traditional role of superintending the administration of justice in the province.

15.7 Principles of Enforcement

The Ministry will act in accordance with established principles of enforcement which include the following:

(a) All persons are entitled to equal protection and benefit before and under the law;

(b) Prosecution will be the result of an informed judgment by staff of the Investigations and Enforcement Branch and the proper exercise of

prosecutorial discretion by Ministry counsel;

(c) Where a decision is made not to pursue enforcement action, the reasons shall be recorded in writing in the investigative file;

(d) Enforcement will be administered in an even-handed, non-discriminatory and fair manner which advances and protects the public interest.

16.0 Informed Judgment

At any stage of the investigative process, staff of the Investigations and Enforcement Branch shall consider the following in order to reach an informed judgment as to whether enforcement action is appropriate:

(a) the seriousness of the violation itself, including whether the violation poses a significant risk to, or will have an adverse effect on, humans, plant or animal life, property or the environment;

(b) the seriousness of the violation in the context of the Ministry's overall regulatory scheme, including whether the pollution emitted as a result of the violation is a serious obstacle to the achievement of the Ministry's air quality and water quality objectives;

(c) whether the violation appears to have been deliberate;

(d) whether the violation appears to have been the result of negligence;

(e) whether the violation has been repeated;

(f) whether the offender has demonstrated, and continues to demonstrate, a negative attitude to pollution control;

(g) whether the offender has concealed pertinent information;

(h) whether the offender has disregarded warnings issued by the Ministry;

(i) the offender's compliance record;

(j) the deterrent effect of enforcement action on similar or other operations;

(k) whether enforcement action is necessary to maintain the integrity of the regulatory process; and

(l) whether failure to pursue enforcement action would tend to bring the law into disrepute.

While it is prudent to consider and evaluate the importance of all of these factors, and possibly others, and to assess which of them indicate that enforcement action is appropriate, there is no minimum number of such indicia which is necessary to justify recommending prosecution.

17.0 Prosecution

17.1 Prosecutorial Discretion

Ministry Counsel in the proper exercise of their role as agents of the Attorney General shall consider all relevant factors pertaining to the due administration of justice, including, but not limited to, those factors listed in sections 15 and 16 of this policy, in reaching the ultimate determination whether or not, in their exclusive discretion, a prosecution is warranted.

17.2 Penalty

The penalty requested by the Crown Prosecutor upon conviction will be commensurate with the seriousness of the offence, and the attitude and circumstances of the offender.

18.0 Issuance of an Offence Notice (Ticket)

There are certain violations which may be prosecuted through the issuance of a *Provincial Offences Act* Offence Notice commonly known as a ticket. Issuance of a ticket initiates a prosecution but permits direct payment of a fine if the person responsible pleads guilty. The regulations made under the *Provincial Offences Act* prescribe short form wordings describing offences for use on Offence Notices.

19.0 Information for the Public Respecting Enforcement Activities

Where charges have been laid, the Ministry will inform the public of its enforcement activities by means of press releases.

Where Ministry staff, as the result of a complaint, identify a violation, the District Officer will keep the complainant generally informed as to the status of the matter, consistent with investigative and prosecutorial considerations.

July 10, 1991

Compliance Policy -- 05-02

SCHEDULE 1

Compliance Policy -- Schedule 1

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Abatement Tools

including

--Warnings

--Voluntary Abatement

[Some examples follow,
but the possible
formats for warnings
and for encouraging
and agreeing on
voluntary abatement,
through letters or
otherwise, are
unlimited.]

--Control Documents

[These are directly
enforceable by
prosecution.]

ABATEMENT TOOL -- WARNING**Name:** Action Request NoticeMinistry of the
Environment**Action Request
Notice**

To the attention of (owner)

Owner's address

Owner of premises known as

Located at

An inspection on of the
 at the above address, has indicated that the following action is necessary to reduce pollution
 from this source :

To avoid further action under :

☐ The Environmental Protection Act, 1971 or ☐ The Ontario Water Resources Act please
 reply indicating your compliance with the above request

by 1B

The original copy of this notice was given to
 at the above premises.

Issued by

District Office

Address

MOE 150-10-10-10

ORIGINAL

2301

ABATEMENT TOOL -- WARNING

Name: Violation Notice

	Ministry of the Environment	Ministère de l'Environnement	Violation Notice Avis d'Infraction
	Ontario		

Observation
 Period
 Période
 d'observation _____ a.m./p.m.
 matin/soir _____ Date _____ 19 _____

Address
 Adresse _____

Premises known as
 Désignation des locaux _____

Name of Owner and/or Operator of Premises:
 Nom du propriétaire et/ou de l'exploitant des locaux: _____

Address
 Adresse _____

Violation of the Ontario Water Resources Act
 Infraction à la loi intitulée The Ontario Water Resources Act ☐

Violation of the Environmental Protection Act
 Infraction à la loi intitulée Environmental Protection Act ☐

Section
 Article _____ Subsection
 paragraphe _____

Regulation no.
 N° du règlement _____ Section
 article _____ Subsection
 paragraphe _____

Details
 Détails _____

This notice served upon
 Cet avis a été remis à _____

at
 à _____ a.m./p.m. on
 heure(s), le _____ 19 _____

C 10501

Provincial Officer
 Agent provincial _____

District Office
 Bureau de district _____

Original
 Original _____ Address
 Adresse _____

NOTE: 10-10-10-10-10

ABATEMENT TOOL--CONTROL DOCUMENTS

including --Order (used to achieve abatement)
--Approval (used to achieve abatement)

--Court Order (used to achieve abatement)
(This last is more a part of enforcement
than abatement, but may prove occasionally
useful.)

Environmental Protection Act

Notes and General Considerations

Crown: The provisions of the Act are binding on the Crown (EPA s. 19).

Environment: EPA deals with the natural environment, in other words, the air, land and water of Ontario.

Index Record: All orders and approvals are to be recorded in an alphabetical index and the Ministry must search the index for the public on request (EPA s. 18).

Successors: All orders and approvals are binding on successors and assignees (EPA s. 18). Unless an approval has conditions to the contrary, an approval can be sold or transferred along with the business to which it applies.

Inspections: It is a condition of every licence, permit or approval that the holder must allow a provincial officer to carry out inspections under EPA, OWRA and PA (EPA s. 127g).

Immunity: Full compliance with an order or program approval provides immunity from prosecution for the matters in the order or program approval within the applicable period (EPA s. 146(2)).

"Statute of Limitations": A prosecution for contravention of the *Environmental Protection Act* or the regulations may not be commenced later than two years after the date of the offence; but, if the offence goes undiscovered for some time, the prosecution may be commenced within two years of the offence first coming to the attention of a Director, provincial officer or provincial analyst (EPA s. 148). Also, a number of offences are "continuing offences", in other words, each day the wrongful practice continues is a new offence. For instance, each day a person operates a waste disposal site, or a factory which has air emissions, without the appropriate certificate of approval, constitutes a new offence.

Procedure for Control Documents: An order of the Director or terms and conditions imposed by the Director or a revocation, suspension or refusal to issue may be appealed to the Environmental Appeal Board and subsequently to the Divisional Court on a question of law and to the Minister on any other matter. The procedure for service, advising of appeal rights and for the appeal, is mostly in Part XI of the EPA, particularly, ss. 121 to 123. For Control Orders and Stop Orders, see also Part X, particularly sections 116 and 119. Generally speaking, apart from emergencies, the giving

of notice of intention to issue a control document is required by the principles of natural justice and administrative law even where not specifically required by the statute (see EPA s. 116 which does require notice for Control Orders).

Where it is the Minister who is authorized to issue an order or give an approval, there is no appeal provided in the statute. Because there is no appeal, the requirements of natural justice for notice and an opportunity to make submissions are particularly important. The Minister's action could be challenged by judicial review application to the courts; this is a fundamental challenge of the right to do something and generally results in a yes or no decision, not a compromise nor a fine-tuning of the document. Judicial review is also available to challenge an order or decision of a Director, but this approach is less likely to be used, because a simpler appeal is provided.

Emergencies: It is up to the Director in issuing an order or imposing terms and conditions, to match the timing of the control document to the urgency of the situation it is intended to correct. In the normal course, the control document will be designed to require steps to be taken shortly after the completion of an appeal, if any. In an emergency or an urgent situation, the control document will require quicker action. The requirements of the control document take effect as written, even if an appeal is started (EPA s. 122c). If the person does the required work and then wins on appeal, the Ministry may be required to reimburse the person to some extent.

If the person is not willing to start doing what is required by the control document and there is not enough time for a hearing, the person may apply to the Environmental Appeal Board for a "stay", in other words, a delay in the effective date of the order, or parts of it, until such time as a full hearing of the matter can be held, or, possibly, until the person and the Director can discuss matters and come to some agreement. On a stay application, the Board (probably a single member) will quickly hear what the applicant has to say as to why the matter is not urgent. The Board is prohibited from granting a stay if granting the stay would result in danger to the health or safety of a person, impairment or serious risk of impairment of the quality of the natural environment, or injury or damage or serious risk of injury or damage to plant or animal life. Accordingly, the Board will want to hear from the Director on these issues before it makes its decision.

Because the Appeal Board must deal rapidly with a stay application, it would be prudent for staff to prepare, as part of the control document, a reasoned explanation of the urgency and of the likely adverse effects which would result from delay. This

portion of the document should be designed in such a way that it can be very quickly extracted and turned into an affidavit to be signed by a provincial officer who is knowledgeable about the subject matter. The affidavit would then be used as evidence when the Appeal Board hears the stay application. This document could be prepared separately, but the control document will require reasons anyway; making this part of the control document (or designing it to mesh with the control document, like a Provincial Officer's Report (EPA s. 6)) will ensure that there is no deviation between the affidavit and the control document.

Work Done By Ministry: Where a control document by the Minister or a Director requires that something be done and the operation of the control document has not been stayed, the Director may go ahead and cause the work to be done, if he or she feels it is in the public interest to do so or if the person required to do the work is not doing it, is not competent to do it or asks assistance (EPA s. 124b). The Director must first give notice that he or she intends to do the work. This carries with it a requirement that the person originally required to do the work, not do it, in other words, the person has to get out of the way and not interfere with what the Director will do. Where the Director gives notice that he or she intends to do the work, the person to whom the control document was issued can not be convicted of failure to comply with the control document in respect of a day following giving of the notice. It is possible for the Director to give such a notice and still permit the person to carry out some or all of the work. If permission is given, it may be possible to prosecute for failure to carry out the work included in the permission.

If a stay has been obtained, it is still possible for the Ministry to step in and do the work, but, in this case, the decision is up to the Minister (EPA s. 124a).

The Director can also step in and do the work if there are grounds to issue a control document, but the identity of the person to whom the control document should be issued is unknown (EPA s. 124c).

The Director must obtain a warrant from a justice of the peace to allow entry on private property to carry out work, unless the owner or occupier consents or the matter is so urgent that any delay would result in environmental harm (EPA s. 124d).

Order to Pay: The Director may issue an order to pay the costs of any thing caused to be done by the Minister or Director, to any person to whom the control document was directed. This order is subject to appeal, but only with respect to whether the cost items were included within the control document and are reasonable in amount (i.e. this is not a second opportunity to appeal the content

of the control document). An order to pay may be filed with the Ontario Court (General Division) and enforced as an order of the court (i.e. there is no need to sue), may be collected as municipal taxes (or provincial land taxes in areas without municipal organization), or recovered from deposits and financial assurance given by the person to whom the control document was issued. (EPA ss. 124e to 124j)

Public Notice: When the Director issues a Control Order or Stop Order, he or she is required to notify the local municipality and the public, in such manner as the Director considers appropriate (EPA ss. 6(2) and 7(2)). The requirement to give notice to the local municipality is potentially extended to all control documents by EPA s. 120a, but only for such control documents as may be prescribed by regulation; as yet, there are no such regulations.

Note that the Compliance Policy stipulates that the minimum form of public notification for a control document or program approval will be the provision of copies to the local MPP and to the clerks of the appropriate local municipality and upper-tier municipality.

Service of Documents: Formal service of documents is intended to,

- either a) put a document into the hands of the person it is intended for;
- or b) represent a reasonably diligent attempt to put a document into the hands of the person it is intended for (even though the attempt may fail or is known to have failed);
- and c) allow the person serving the document to prove what he or she has done and rely on the fact of service as a firm foundation for any subsequent steps.

The *Environmental Protection Act* provides that a document is sufficiently served if delivered personally, mailed by ordinary mail to the person at the latest address shown on Ministry records, or served in accordance with the regulations. There are no regulations respecting service as yet, but in future, these might authorize service by notice in the newspapers, posting up on affected land, facsimile transmission, etc. Service by mail is deemed to take place on the fifth day after mailing, unless the person can prove that he or she did not actually receive the document until later, through no personal fault (EPA s. 142(2)). While not required, it will usually be prudent to use a form of mailing which returns to the sender, a signed receipt for the document from the recipient. In many cases it is prudent to send an additional copy by ordinary mail, because delivery is not

delayed by the mail carrier's attempts to get a signature for delivery.

Miscellaneous: There are a number of things that can be included in most types of control documents (watch the specific wording in each case):

- a) an EPA order under ss. 6, 7, 17, 41 and 42 can be issued against previous as well as current persons responsible
- b) an order can include intermediate or procedural steps (in order to better demonstrate progress toward the ultimate goal and to provide an early warning of default) (EPA s. 149(1));
- c) an order can require a person to permit access to land to enable work to be done by another (e.g. the landlord could be required to allow a tenant to return to the property and clean up, or a landowner could be required to allow a neighbour on to the land to do work or carry out monitoring) (EPA s. 149(2));
- d) a control document can require the provision of financial assurance to assure the doing of whatever the control document requires (EPA s. 119b and Part X-A generally);
- e) a control document affecting land can require that the land not be sold unless the purchaser is first notified of the problem by being given a copy of the control document; such a requirement can be registered on title (a form to be used for such registration will be prescribed by regulation shortly); a purchaser of land can void the purchase if he or she was not given a copy of the control document as required (EPA s. 150)). [Note: The requirement that land not be sold without a warning, would not be effective where the land is owned by a corporation and a new owner buys the shares of the corporation; presumably, persons conducting business like this can look after protecting themselves.]

Caution: The discussion in this document of abatement tools founded in statute, is necessarily general and deals only with the statute as it exists at the time of writing. The advice of a lawyer is required as to matters of detail and as to the law applicable when a statute is amended.

Environmental Protection Act
Penalties--General

	Level I -basic offence -s. 146	Level II -discharge -likely or actual damage -s. 146a	Level III -hazardous or liquid waste -potential damage -s. 147(1&2)	Level IV -hazardous or liquid waste -actual damage -s. 147(3&4)
Individual first offence minimum	n/a	n/a	\$2000	\$2000
Individual first offence maximum	\$10,000	\$10,000 plus 1 year	\$10,000 plus 1 year	\$50,000 plus 1 year
Individual subsequent offence minimum	n/a	n/a	\$4000	\$4000
Individual subsequent offence maximum	\$25,000	\$25,000 plus 1 year	\$25,000 plus 1 year	\$100,000 plus 1 year
Corporation first offence minimum	n/a	\$2000	\$2000	\$2000
Corporation first offence maximum	\$50,000	\$200,000	\$100,000	\$1,000,000
Corporation subsequent offence minimum	n/a	\$4000	\$4000	\$4000
Corporation subsequent offence maximum	\$100,000	\$400,000	\$200,000	\$2,000,000

See also: s. 146c - forfeiture of monetary benefit
s. 146d - order to restore environment
s. 146e - suspension for non-payment
s. 147a - Director obligations

Environmental Protection Act
Penalties--Septic Tanks; Litter & Packaging

	Septic Tanks and other Part VII matters --s. 72	Litter under Part VIII --s. 78	Packaging under Part VIII --s. 78a
Individual first offence minimum	n/a	n/a	n/a
Individual first offence maximum	\$2000	\$1000	\$2000
Individual subsequent offence minimum	n/a	n/a	n/a
Individual subsequent offence maximum	\$2000	\$2000	\$5000
Corporation first offence minimum	n/a	n/a	n/a
Corporation first offence maximum	\$2000	\$2000	\$5000
Corporation subsequent offence minimum	n/a	n/a	n/a
Corporation subsequent offence maximum	\$2000	\$5000	\$10,000

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Control Order (EPA s.6)

Act: EPA ss. 6, 113, 114, 115, 116

Issued By: Director (Regional Director)

Issued To: person responsible for
 --adverse effects, or
 --contravention of a regulation
 resulting from a discharge of a contaminant to the
 natural environment and includes previous persons
 responsible

Conditions Precedent: The report of a provincial officer must find adverse effects or contravention of a regulation resulting from a discharge of a contaminant to the natural environment and must be served on the person responsible.

Required Reasons: as per provincial officer report

Authorized Content: This order may require a person to limit, control or stop the discharge, as well as to comply with directions relating to alteration of the manner of discharge or the installation of abatement equipment. In addition the person may have to monitor the discharge, conduct studies and report to the Director.

Remarks: Notice of intention required by s. 116. Public notice required by s. 6(2). Otherwise, standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Order (used in emergency)

Name: Stop Order (EPA s.7)

Act: EPA s. 7, 117, 118, 119

Issued By: Director (Regional Director)

Issued To: person responsible and previous persons responsible

Conditions Precedent: There must be reasonable and probable grounds to believe that a contaminant is being discharged at a rate which constitutes an immediate danger to human life or to property.

Required Reasons: as above

Authorized Content: stop the discharge, permanently or for a specified period

Remarks: This order may be made without prior notice and comes into effect immediately. It is not stayed by appeal. It must be in writing and give written reasons. Public notice is required (s. 7(2)).

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Air Approval (EPA s. 8)

Act: EPA s. 8

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use, and also the Regional Director-limited and the District Officer-limited to portable rock crushers and portable asphalt plants)

Issued To: person responsible for source of air emissions

Conditions Precedent: probable grounds for expecting an adverse effect

Required Reasons: as above

Authorized Content: Terms and conditions may be imposed in a new or existing approval, or a new approval may be refused, or an existing approval revoked or suspended.

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

ABATEMENT TOOL -- VOLUNTARY ABATEMENT

Name: Program Approval (EPA s. 9)

Act: EPA ss. 9, 10, 11

Issued By: Director (Regional Director)

Issued To: person responsible

Conditions Precedent: Person responsible voluntarily submits to the Director a program to prevent or reduce or control the discharge of a contaminant to the natural environment.

Required Reasons: as above

Authorized Content: approve submitted program

Remarks: Compliance with program approval grants immunity from prosecution for pollution (s. 146(2)). The Approval does not prevent the Director from issuing a control or stop order. The Director may amend or revoke a program approval, subject to appeal or with consent. There is no right to a program approval and no recourse if the Director refuses to grant one. Once a program approval is granted, there is no penalty for failure to comply with it; but the immunity from prosecution for the underlying pollution granted by the program approval lapses.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order for Repair of Damage (EPA s. 16)

Act: EPA s. 16

Issued By: Director

Issued To: person who caused or permitted a discharge

Conditions Precedent: a contaminant has caused environmental damage or is likely to cause environmental damage

Required Reasons: as above

Authorized Content: prevent or repair the injury caused to the environment; provide alternate water supplies

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order for Preventative Measures (EPA s. 17)

Act: EPA s. 17

Issued By: Director (Regional Director)

Issued To: person who owns or controls or owned or controlled an environmentally risky undertaking

Conditions Precedent: The Director believes, on reasonable and probable grounds, that possible future discharges from the undertaking might impair the quality of the natural environment.

Required Reasons: The required measures must be necessary or advisable to prevent or reduce the risk of discharge, or to prevent or decrease adverse effects from a discharge

Authorized Content: The order may require the person to monitor, study and report, to have personnel on hand, to obtain or install equipment and to implement procedures in order to prevent or reduce the risk of discharge, or to prevent or decrease adverse effects from a discharge.

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Waste Management Approval (EPA s. 27)

Act: EPA ss. 27, 28, 30, 32, 33, 33a, 37, and 38

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use, and also the Regional Director & Assistant Regional Director)

Issued To: owner or operator of a waste disposal site or waste management system

Conditions Precedent: --non-compliance with Act or regulations
or
--probable grounds to believe that operations may create a nuisance, are not in the public interest or may result in a hazard to health or safety

Required Reasons: as above

Authorized Content: Terms and conditions may be imposed in a new or existing approval, or a new approval may be refused, or an existing approval revoked or suspended.

Remarks: Standard procedures for issuance and appeal (see page 10).

When an approval is applied for, depending on the circumstances, a hearing may be mandatory or may be required at the Director's discretion. An environmental assessment may be required.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Report Respecting Waste Management & Collection (EPA s. 29)

Act: EPA s. 29

Issued By: Minister

Issued To: clerk of a municipality

Conditions Precedent: The Minister issues a report in writing that he or she is of the opinion that it is in the public interest that a municipality implement a waste management system or site or any part thereof.

Required Reasons: as above

Authorized Content: may contain specific measures required

Remarks: This report takes away any need for the municipal council to obtain the assent of the electors for any necessary expenditures. The council must do everything possible to implement the report of the minister within time specified. There is no appeal of a report by the Minister.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Remove Waste (EPA s. 41)

Act: EPA s. 41

Issued By: Director (Regional Director)

Issued To: the occupant or person having charge or control of land and previous such occupants and persons

Conditions Precedent: Waste has been deposited on land that is not an approved site.

Required Reasons: as above

Authorized Content: removal of the waste and restoration of the site

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Upgrade Waste Site or System (EPA s. 42)

Act: EPA s. 42

Issued By: Director (Regional Director)

Issued To: owner or previous owner of site or system

Conditions Precedent: system or site not in conformity with Part V or the regulations

Required Reasons: as above

Authorized Content: bring system or site into conformity

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Former Disposal Site Approval (EPA s. 45)

Act: EPA s. 45

Issued By: Minister

Issued To: owner of former disposal site (within 25 years) who wishes to put land to different use

Conditions Precedent: as above

Required Reasons: none

Authorized Content: The Minister is free to require whatever he or she wishes (e.g. remove the waste, install gas venting) before granting the approval and can impose ongoing conditions in the approval granted.

Remarks: There is no right to obtain this approval and no recourse if the Minister refuses to grant it.

Environmental Protection Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Number Plate Order (EPA ss. 47b & 47c)

Act: EPA ss. 47b & 47c

Issued By: Court

Issued To: person convicted of offence respecting hazardous or hauled liquid industrial waste

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: The court may suspend the permit and detain the number plates of the vehicle until the fine is paid, or if continued operation of the vehicle is likely to result in adverse effects.

Remarks:

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Private Sewage Approval (EPA ss. 64 & 65)

Act: EPA ss. 64 & 65

Issued By: Director (Regional Director & Assistant, named Regional staff, Health Unit Officials)

Issued To: the person responsible for the construction, installation, etc. of a private sewage system or any structure in connection with which a private sewage system will be used

Conditions Precedent: --non-compliance with Act or regulations
or
--probable grounds to believe that the system may create a nuisance, is not in the public interest or may result in a hazard to health or safety or impairment of the natural environment

Required Reasons: as above

Authorized Content: Terms and conditions may be imposed in a new or existing approval, or a new approval may be refused, or an existing approval revoked or suspended.

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Use Permit (EPA s. 67)

Act: EPA s. 67

Issued By: Director (Regional Director & Assistant, named Regional staff, Health Unit Officials)

Issued To: person who wishes to use a private sewage system

Conditions Precedent: non-compliance with certificate of approval or Act or regulations

Required Reasons: A permit may be refused until the private sewage system is altered so that it will not create a nuisance, be contrary to the public interest or result in a hazard to health or safety.

Authorized Content: as above

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Private Sewage Order (Part VII Order) (EPA s. 68)

Act: EPA s. 68

Issued By: Director (Regional Director & Assistant)

Issued To: owner, operator or person who constructs a private sewage system

Conditions Precedent: a private sewage system adversely affects the natural environment, is out of compliance with regulations, is constructed without approval or in contravention of approval conditions, or is operated without a permit, or

a building is altered or constructed or land is altered so as to impair operation of a private sewage system

Required Reasons: see below

Authorized Content: such order as Director considers necessary to lessen or prevent the discharge of any contaminant into the natural environment

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Private Sewage Hauler/Installer Licence (EPA s. 69)

Act: EPA s. 69

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; the Manager--Land Use; and the Supervisor--Waste Sites)

Issued To: person wishing to engage in the business of installing septic tanks or pumping them out and hauling the sewage away for disposal

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused or revoked or not renewed for incompetence, dishonesty, lack of facilities or equipment or likely non-compliance with Act and regulations. Terms and conditions may be imposed to restrict the area of operation or to regulate storage, haulage and disposal.

Remarks: Standard procedures for issuance and appeal (see page 10).

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Directions to Restore Environment after a Spill (EPA s. 82)

Act: EPA s. 82

Issued By: Minister

Issued To: employees and agents of Ministry

Conditions Precedent: a pollutant is spilled and there is
likelihood in the Minister's opinion of adverse effects,
and
the persons liable to clean up are not
available or are unable or unwilling to clean up or to ask
assistance

Required Reasons: best interests of public

Authorized Content: do anything practicable to prevent, eliminate
and ameliorate the adverse effect and restore the natural
environment

Remarks: The Minister need not hold a hearing before giving
directions. Directions override prohibitions in statutes,
regulations, approvals, etc. There is no appeal of directions
issued by the Minister.

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Spill Direction or Approval (EPA s. 84(2))

Act: EPA s. 84(2)

Issued By: Director (Director and Assistant Director of each Region and of Approvals Branch and Project Engineering Branch)

Issued To: anyone carrying out a duty mandated by Part IX of the Act or any municipality (or other person authorized under s. 88), who cleans up a spill which has caused or is likely to cause adverse effects

Conditions Precedent: This is available where there is a need to dispose of or treat, etc., cleaned up spilled material and other materials (soil, protective clothing, etc.) contaminated by the spill. It goes hand in hand with s. 84(1), which **prohibits** such disposal, etc., unless authorized by approvals, orders, requirements, etc., issued under other sections or other Acts, or by a direction or approval under s. 84(2).

Required Reasons: as above

Authorized Content: This can give authority to transport, dispose of, treat or use the affected material. It could be as simple as authorizing the use of the material as fill, to fill in a hole on the property, or authorizing the cleaned up material (a truckload of iron ore, perhaps) to continue on its way to the refinery. Often, the cleaned up material must be dealt with as a waste and treatment or disposal is hampered by the lack of waste management systems or waste disposal sites with the approvals necessary to deal with the particular material. In those circumstances, the direction or approval serves almost as an emergency approval and takes the place of a new Part V approval or an amendment to an existing one. However, the s. 84 approval may not be contrary to the regulations.

Remarks: S. 84(2) authorizes issuance of this direction or approval, which is described in s. 84(1)(b). S. 84(1)(b) does not, by itself, provide any power to issue directions or approvals. Note that this "direction or approval" is basically an approval and is not effective to order or require things. In particular, it cannot force waste on unwilling operators of sites or systems. This is not a true control document as it is not directly enforceable; but, failure to obtain or follow the approval contravenes the prohibition in s. 84(1).

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Restore the Environment after a Spill (EPA s. 85)

Act: EPA s. 85

Issued By: Minister

Issued To: an owner or controller of a pollutant including a municipality, public authority or person adversely affected by the pollutant

Conditions Precedent: a pollutant is spilled and there is likelihood of adverse effects

Required Reasons: best interest of the public

Authorized Content: do anything practicable to dispose of the pollutant and protect persons or things at risk by ameliorating and eliminating the adverse effects as well as restoring the natural environment

Remarks: The Minister need not hold a hearing before issuing the order. There is no appeal of an order by the Minister. The order overrides this or other Acts, regulations, approvals, etc. An order by the Minister may be oral or in writing, but the order is not effective until reduced to writing and served. In other words, the Minister could tell staff by phone to write down what is wanted in the order, and to serve the document. Service on an employee or agent is valid service on the employer or principal.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Requirement for Financial Assurance (EPA s. 119b)

Act: EPA s. 119b (see generally ss. 119a to 119f)

Issued By: Director (whichever Director was authorized to issue the underlying order or approval)

Issued To: person obtaining approval or person subject to order

Conditions Precedent: This requirement can be added to an approval or order under the EPA or OWRA (see definitions in s. 119a). Issued in situations where compliance with an order or approval must be assured. Ministry guidelines (see Policy 02-03 -- Financial Assurance) indicate where financial assurance should be required or considered.

Required Reasons: as above

Authorized Content: provision of financial assurance to the Crown

Remarks: Financial Assurance is not usually required of municipalities or other public institutions.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Pay for Work Done By Ministry (EPA s. 124e)

Act: EPA s. 124e

Issued By: Director

Issued To: person to whom a previous control document was issued

Conditions Precedent: when work required by a previous control document is done by the Ministry, as directed by the Minister or Director, the Director may order the person to whom the previous control document was issued, to pay the Ministry's costs

Required Reasons: as above

Authorized Content: itemized statement of costs; remittance to be made to Treasurer of Ontario

Remarks: not a true control document, because the abatement has previously been achieved; complementary to a control document

Please see additional information above under the heading, *Environmental Protection Act: Notes and General Considerations*, page 10.

Environmental Protection Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction or Restraining Order (EPA s. 144(1))

Act: EPA s. 144(1)

Issued By: Court

Issued To: person contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: Minister applies to court

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require proof of previous convictions for the same thing, or strong evidence of previous contraventions with a very good explanation of why they were not prosecuted, or proof that the current contravention will have very serious environmental effects if not stopped.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks:

Environmental Protection Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction (after conviction) (EPA s. 144(2))

Act: EPA s. 144(2)

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: The convicting court on its own or at the request of the prosecutor may prohibit continuation or repetition of offence.

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require strong evidence of likelihood of repetition or continuation of offence.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks: May be referred to as a "restraining order".

Environmental Protection Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Restoration Order (EPA s. 146d)

Act: EPA s. 146d

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: The convicting court on its own or at the request of the prosecutor may order the person to prevent, decrease or eliminate the effects of the offence, and to restore the environment. The court may order other conditions to prevent similar unlawful conduct or to contribute to rehabilitation.

Remarks: The order cannot be in force for more than one year.

Environmental Protection Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Licence Order (EPA s. 146e)

Act: EPA s. 146e

Issued By: Court

Issued To: person convicted of offence under the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations under any of them

Conditions Precedent: If a person convicted has not paid the fine, the Director may apply to the court for an order.

Required Reasons: as above

Authorized Content: The court may make an order under s. 70(2) of the *Provincial Offences Act*, directing suspension or non-issuance of a "licence". "Licence" includes an EPA licence, a Part V certificate of approval, an OWRA licence or permit, or a PA licence or permit.

Remarks:

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order - Air Pollution Index (EPA Reg. 308, s. 4)

Act: EPA Regulation 308, s. 4

Issued By: Minister in consultation with the Minister of Health

Issued To: owners or operators of sources of air pollution

Conditions Precedent: where air pollution index for an area indicates increasing air pollution that may lead to an air pollution episode

Required Reasons: as above

Authorized Content: At API 32, sources can be ordered to prepare for curtailment of specified operations.

At API 50, sources can be ordered to curtail specified operations.

Remarks: There is no appeal of an order issued by the Minister.

Environmental Protection Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Lambton Industry Meteorological Alert (EPA O. Reg. 151/81)

Act: EPA O. Reg. 151/81

Issued By: Director (named staff of SW Region)

Issued To: all major sources in Lambton

Conditions Precedent: SO₂ at 0.07 ppm and weather conducive to elevated SO₂ levels

Required Reasons: as above

Authorized Content: The order requires all major sources in the defined Lambton area to cut back.

Remarks:

Environmental Protection Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Director's Instructions (EPA O. Reg. 11/82)

Act: EPA O. Reg. 11/82 Waste Management - PCBs

Issued By: Director (Armstrong, Toth, McIntyre, Joseph, named Regional staff--all subject to Ministry administrative direction document -- see below)

Issued To: person managing PCB waste

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: authorizes movement, disposal, decontamination, disposal, etc., of PCB waste

Remarks: This is not a true control document as it is not directly enforceable; but, failure to obtain or follow the instructions makes movement, disposal, etc., illegal without a certificate of approval.

All appointments of Directors for purposes of this regulation are made subject to the limitations that:

1. the Director not authorize any movement, storage or disposal of PCB waste under the Regulation except in accordance with the provisions of the Administrative Direction dated 22/12/81; and
2. a memorandum of each action as Director under the Regulation shall be filed with the appropriate Regional Director of the Ministry and with the Director of the Approvals Branch of the Ministry.

The text of the Administrative Direction dated 22/12/81 follows:

**ADMINISTRATIVE DIRECTION
RE REGULATION TO CONTROL
THE MOVEMENT OF PCB WASTES**

Purpose

The Regulation to Control the Movement of PCB Wastes is

--page issued July 10, 1991

designed to give the Ministry control over all PCB liquids and equipment as they are taken out of service. This control did not exist before the regulation was enacted. The primary thrust of the regulation is that it gives a Director the discretionary power either to permit the movement of PCB waste or to create temporary in situ waste disposal sites for such wastes provided that the owner of the waste material has complied with conditions stipulated by the Director. In exercising this discretion it is essential that the Directors are able to apply it equitably across the Province, and the purpose of this direction is to provide the necessary general and specific guidance to accomplish that goal. The regulation is not intended to be used as a vehicle to permit the establishment of new PCB waste disposal sites other than on the property of the owner of the PCB waste.

It should be noted that, under the regulation, certain materials which would normally be considered as sources of useful energy or material, e.g. fuel or scrap metal, are now designated wastes. The regulation was made in order that the Ministry could control these as well as materials containing PCBs which were clearly waste materials. Because the regulation brings additional materials within the scope of Part V of the *Environmental Protection Act* the mechanism of control by Director's instructions has been adopted, in addition to the established Part V mechanism of Certificate of Approval, to ensure the safe, close control of PCBs until their final disposal when, in the future, methods become available.

This directive is to be considered as complementary to the requirements of the *Environmental Protection Act*, regulations made under the Act, the Ministry of the Environment's Guideline for the Management of PCB Wastes in Ontario and Environment Canada's PCB Handbook. It reflects overall Ministry policy, and should be applied recognizing the specific requirements of individual applications, acceptable alternative technology and the need for the absolute containment of PCB wastes until such time as they can be destroyed in an environmentally-acceptable manner.

Policy

Because there is neither an approved site nor an approved technology for the ultimate disposal of PCB wastes in Ontario, and only an extremely-limited approved storage capacity for such wastes, Ministry policy is to require the storage of PCB wastes at the point of generation except where it can be clearly demonstrated that by so doing an environmentally-unacceptable condition would be continued or created.

Ministry of Labour Involvement

In determining whether an environmentally-unacceptable condition exists, the total environment is to be considered, i.e. both the exterior and in-plant environments. The Ministry of Environment's mandate covers the protection of the natural environment and personal health; occupational health and the working environment fall under the mandate of the Ministry of Labour. Therefore, all decisions involving the handling and storing of PCB wastes must be made in joint consultation with the local representative of the Ministry of Labour's Industrial Health and Safety Branch.

Movement of PCB Wastes

The rationale for the regulation is to ensure the safe storage of PCB wastes and the prevention of their unnecessary handling and transportation, where "unnecessary handling and transportation" may be broadly defined as that which is occasioned solely by an arbitrary decision of the owner of the waste.

Movement from the point of generation, either to an approved disposal site owned by someone other than the owner of the PCB wastes or to a site owned by the owner of the PCB wastes but not contiguous with the point of generation, should only be considered where, in the opinion of the Director, there is neither an acceptable storage site at the point of generation nor the possibility of creating an acceptable storage site at that location. Eventually, when destruction facilities are approved, movement to such facilities will be acceptable. "Point of generation" refers to the location of the PCB liquid or equipment when they initially become subject to the regulation.

The regulation requires the owner of PCB liquid or equipment which is to be taken out of service to notify the Ministry prior to doing so, and in the normal course of events, four types of applications involving the handling of PCB wastes can be envisaged. Two of these involve movement and two involve storage; any application not falling into one of these categories will have to be evaluated on its particular merits:

1. Movement to an approved waste disposal site:

Where the PCB waste will be moved to a waste disposal site already approved for the disposal of PCBs, an application should be dealt with under the regulation through the use of Director's instructions.

2. Movement to an as yet unapproved waste disposal site:

Where the PCB waste will be moved to a waste disposal site being established by a third party for the disposal of PCBs, an application should be dealt with by application to the Director of Approvals for a Certificate of Approval and a public hearing may be required.

3. Storage at point of generation:

Where an owner of PCB wastes wishes to store the wastes at the point of generation (or a site contiguous to the point of generation), the application will normally be dealt with by use of Director's instructions under the regulation.

4. Storage at alternative site on owner's property:

Where an owner wishes to store PCB waste on other property owned by him which is not contiguous to the point of generation, e.g. a public utility commission establishing a centralized storage site for all its transformers as they are taken out of service, the question of whether this should be done pursuant to a Director's instructions under the regulation or by means of a Certificate of Approval should be decided on the basis of the facts involved in the particular application.

However, in all cases when a site is established through the use of Director's instructions under the regulation, the Director of Approvals should be advised in order to establish a central record of all sites at which PCB wastes are located. Similarly, the Director of Approvals should be advised when any such site ceases to be a PCB waste disposal site due to relocation of the waste.

Site Assessment Criteria

1. An owner of PCB liquid or equipment who wishes to take either or both out of service or who wishes to relocate PCB wastes currently stored on his property is entitled to know the criteria which will be used to determine whether or not he will be permitted to establish a PCB waste disposal site on his property, and, if not, what the Ministry will require of him before he is permitted to move the waste.

2. A Director, in deciding whether or not a particular PCB waste disposal site should be established, should be guided by the same selection criteria as the other Directors.

3. The field investigator in preparing a recommendation for the Director is faced with three options:

- an acceptable site already exists at the point of generation;
- an acceptable site can be created at that point; and
- no acceptable site exists at that point, and removal of the PCB waste to an alternative site is the only option open.

In developing his recommendation, the field investigator needs to know what deviations from the so-called ideal storage site are acceptable and whether an existing site or a new one on the owner's property can be made acceptable at reasonable expense.

4. The key to equitable application of the regulation therefore hinges on the use of definite site assessment criteria. In developing these, two basic considerations were involved:

- PCBs constitute a potential environmental or health hazard if they enter groundwater or watercourses, become airborne, or enter the human system directly (inhalation, ingestion or direct skin contact);
- An acceptable storage site, i.e. which prevents such environmental and health hazards, may not necessarily be an ideal storage site.

The effectiveness of a particular site may therefore be gauged by its conformity in all of the following areas:

- Containment
- Safety
- Security
- Monitoring

Containment

The ideal storage site is described in some detail in the PCB handbook. An elaborate facility such as is described could only be justified in its entirety where considerable volumes of PCB waste were to be stored and handled over long periods.

The containment features are:

- the specific container for the PCB waste;
- the surface upon which the palletized containers rest.

Provided that it is in good condition, the original container (transformer or other vessel) is the best container for storage purposes, since unnecessary handling is avoided. If the original container is not acceptable, the liquid should be transferred to metal drums in accordance with the PCB Handbook. The original container, if it cannot be decontaminated, should be crated and palletized.

Solid wastes, except drums and transformer components, should be drummed in accordance with the PCB Handbook. Transformer casings and drums may be decontaminated. Transformer cores and windings will continue to be treated as PCB wastes pending the development of an effective method of decontamination.

While indoor storage is preferable, since it provides all-weather protection, outdoor storage of palletized containers which are protected from direct impingement of rain and snow can be accepted. Protection might vary from plastic sheeting to a wooden structure.

Ideally, the surface upon which the palletized containers rest should be impermeable and suitably modified to contain the containers' contents in the event of a leak. There should be no drains in the area. In the case of outdoor storage particularly, variations from the above would depend on the natural permeability of the soil. Heavy clays may be virtually impermeable; with more permeable soils, construction of a concrete pad may be the only solution. Rainwater runoff provisions will depend on the nature of the weather protection provided.

Safety

The ideal storage site encompasses:

- Access ramps
- Container labelling
- Placarding of storage area
- Posting of emergency procedures
- Cleanup materials (properly labelled)
- Adequate ventilation
- Non-corrosive atmosphere

Implementation of all or most of the above requirements, with the possible exception of the last item, should be considered as reasonable demands on the owner.

All handling and transportation procedures should be carried out in accordance with the procedures in the PCB Handbook and to the satisfaction of the Ministry of Labour.

Security

The storage area should be segregated from other work and storage areas, and preferably be located in an area of low traffic volume. Surveillance of the area and its contents should, however, be possible with minimum effort. Containers on pallets should be single-stacked to make surveillance easier. The potential storage area should be appraised from the point-of-view of fire hazard and protective devices, e.g. sprinklers or smoke detection devices (where appropriate).

Monitoring

Since the owner of PCB wastes is required by the regulation to keep proper records of all PCB wastes in his PCB waste disposal site, the most desirable monitoring procedure would be for the owner to appoint one person who would be responsible for the site and its proper maintenance. This person should become familiar with all the rules, regulations and guidelines applicable to his task, and should be assisted in that task by regular inspections of the site by MOE personnel.

DHE/gr
22/12/81

Ontario Water Resources Act

Notes and General Considerations

Crown: The provisions of the Act are binding on the Crown (OWRA s. 1a)

Environment: OWRA generally protects "waters" (OWRA s. 1(ta)). The terms "environment" and "natural environment" are not used.

Index Record: All orders, approvals, s.33 reports are to be recorded and the Ministry must search the records for the public on request (OWRA s. 9a).

Successors: All orders, approvals, s. 33 reports are binding on successors and assignees (OWRA s. 9a). Unless an approval has conditions to the contrary, an approval can be sold or transferred along with the business to which it applies. This is not the case with a well construction permit, well contractor licence or well technician licence, which are not transferable (OWRA s. 22n).

Inspections: It is a condition of every licence, permit, approval, report, notice, agreement or order under the OWRA that the holder must allow a provincial officer to carry out inspections under EPA, OWRA and PA (OWRA S. 10i).

Immunity: Sewage works that are constructed and operated in compliance with this Act and the EPA and Regulations and any orders and approvals are deemed to be constructed, operated, etc. by statutory authority (OWRA s. 30). This gives some protection from suits for damages, if the construction or operation harms neighbours.

"Statute of Limitations": A prosecution for contravention of the *Ontario Water Resources Act* or the regulations may not be commenced later than two years after the date of the offence; but, if the offence goes undiscovered for some time, the prosecution may be commenced within two years of the offence first coming to the attention of a Director or a provincial officer (OWRA s. 54). Also, a number of offences are "continuing offences", in other words, each day the wrongful practice continues is a new offence. For instance, each day a person operates a sewage works without an approval, constitutes a new offence.

Procedure for Control Documents: An order of the Director or terms and conditions imposed by the Director or a revocation, suspension or refusal to issue may be appealed to the Environmental Appeal Board and subsequently to the Divisional Court on a question of law and to the Minister on any other matter. The procedure for service, advising of appeal rights and for the appeal, is mostly in section 61 of the OWRA and succeeding sections. More specific provisions with respect to water-well matters appear in ss. 22k to 22p. The giving of notice of intention to issue an order is required (OWRA s. 61) apart from emergencies.

The Director's action could also be challenged by judicial review application to the courts; this is a fundamental challenge of the right to do something and generally results in a yes or no decision, not a compromise nor a fine-tuning of the document. Judicial review is unlikely to be used very often, because of the simpler appeal procedure provided.

Emergencies: It is up to the Director in issuing an order or imposing terms and conditions, to match the timing of the control document to the urgency of the situation it is intended to correct. In the normal course, the control document will be designed to require steps to be taken shortly after the completion of an appeal, if any. In an emergency or an urgent situation, the control document will require quicker action. The requirements of the control document take effect as written, even if an appeal is started (OWRA s. 64). If the person does the required work and then wins on appeal, the Ministry may be required to reimburse the person to some extent.

If the person is not willing to start doing what is required by the control document and there is not enough time for a hearing, the person may apply to the Environmental Appeal Board for a "stay", in other words, a delay in the effective date of the order, or parts of it, until such time as a full hearing of the matter can be held, or, possibly, until the person and the Director can discuss matters and come to some agreement. On a stay application, the Board (probably a single member) will quickly hear what the applicant has to say as to why the matter is not urgent. The Board is prohibited from granting a stay if granting the stay would result in danger to the health or safety of a person, impairment or serious risk of impairment of waters, or injury or damage or serious risk of injury or damage to plant or animal life. Accordingly, the Board will want to hear from the Director on these issues before it makes its decision.

Because the Appeal Board must deal rapidly with a stay application, it would be prudent for staff to prepare, as part of the control document, a reasoned explanation of the urgency and of the likely adverse effects which would result from delay. This

portion of the document should be designed in such a way that it can be very quickly extracted and turned into an affidavit to be signed by a provincial officer who is knowledgeable about the subject matter. The affidavit would then be used as evidence when the Appeal Board hears the stay application. This document could be prepared separately, but the control document will require reasons anyway; making this part of the control document (or designing it to mesh with the control document, like a Provincial Officer's Report (EPA s. 6)) will ensure that there is no deviation between the affidavit and the control document.

Work Done By Ministry: Where a control document by the Minister or a Director requires that something be done and the operation of the control document has not been stayed, the Director may go ahead and cause the work to be done, if he or she feels it is in the public interest to do so or if the person required to do the work is not doing it, is not competent to do it or asks assistance (OWRA s. 48b). The Director must first give notice that he or she intends to do the work. This carries with it a requirement that the person originally required to do the work, not do it, in other words, the person has to get out of the way and not interfere with what the Director will do.

Where the Director gives notice that he or she intends to do the work, the person to whom the control document was issued can not be convicted of failure to comply with the control document in respect of a day following giving of the notice. It is possible for the Director to give such a notice and still permit the person to carry out some or all of the work. If permission is given, it may be possible to prosecute for failure to carry out the work included in the permission.

If a stay has been obtained, it is still possible for the Ministry to step in and do the work, but, in this case, the decision is up to the Minister (OWRA s. 48a).

The Director can also step in and do the work if there are grounds to issue a control document, but the identity of the person to whom the control document should be issued is unknown (OWRA s. 48c).

The Director must obtain a warrant from a justice of the peace to allow entry on private property to carry out work, unless the owner or occupier consents or the matter is so urgent that any delay would result in environmental harm (OWRA s. 48d).

Order to Pay: The Director may issue an order to pay the costs of any thing caused to be done by the Minister or Director, to any person to whom the control document was directed. This order is subject to appeal, but only with respect to whether the cost items

were included within the control document and are reasonable in amount (i.e. this is not a second opportunity to appeal the content of the control document). An order to pay may be filed with the Ontario Court (General Division) and enforced as an order of the court (i.e. there is no need to sue), may be collected as municipal taxes (or provincial land taxes in areas without municipal organization), or recovered from deposits and financial assurance given by the person to whom the control document was issued. (OWRA ss. 48e to 48j)

Public Notice: The *Ontario Water Resources Act* contains a provision which may require the Director to give notice of the issuance of control documents to the local municipality (OWRA s. 61(2d)), but only for such control documents as may be prescribed by regulation; as yet, there are no such regulations.

Note that the Compliance Policy stipulates that the minimum form of public notification for a control document will be the provision of copies to the local MPP and to the clerks of the appropriate local municipality and upper-tier municipality.

Service of Documents: Formal service of documents is intended to,

- either a) put a document into the hands of the person it is intended for;
- or b) represent a reasonably diligent attempt to put a document into the hands of the person it is intended for (even though the attempt may fail or is known to have failed);
- and c) allow the person serving the document to prove what he or she has done and rely on the fact of service as a firm foundation for any subsequent steps.

The *Ontario Water Resources Act* provides that a document is sufficiently served if delivered personally, mailed by ordinary mail to the person at the latest address shown on Ministry records, or served in accordance with the regulations. There are no regulations respecting service as yet, but in future, these might authorize service by notice in the newspapers, posting up on affected land, facsimile transmission, etc. Service by mail is deemed to take place on the fifth day after mailing, unless the person can prove that he or she did not actually receive the document until later, through no personal fault (OWRA s. 65b). While not required, it will usually be prudent to use a form of mailing which returns to the sender, a signed receipt for the document from the recipient. In many cases it is prudent to send an additional copy by ordinary mail, because delivery is not

delayed by the mail carrier's attempts to get a signature for delivery.

Miscellaneous: There are a number of things that can be included in most types of control documents (watch the specific wording in each case):

- a) an order can include intermediate or procedural steps (in order to better demonstrate progress toward the ultimate goal and to provide an early warning of default) (OWRA s. 65(2));
- b) an order can require a person to permit access to land to enable work to be done by another (e.g. the landlord could be required to allow a tenant to return to the property and clean up, or a landowner could be required to allow a neighbour on to the land to do work or carry out monitoring) (OWRA s. 65(3));
- c) a control document can require the provision of financial assurance to assure the doing of whatever the control document requires (EPA s. 119b and Part X-A generally; applies to OWRA control documents);
- d) a control document affecting land can require that the land not be sold unless the purchaser is first notified of the problem by being given a copy of the control document; such a requirement can be registered on title (a form to be used for such registration will be prescribed by regulation shortly); a purchaser of land can void the purchase if he or she was not given a copy of the control document as required (OWRA s. 64a). [Note: The requirement that land not be sold without a warning, would not be effective where the land is owned by a corporation and a new owner buys the shares of the corporation; presumably, persons conducting business like this can look after protecting themselves.]

Caution: The discussion in this document of abatement tools founded in statute, is necessarily general and deals only with the statute as it exists at the time of writing. The advice of a lawyer is required as to matters of detail and as to the law applicable when a statute is amended.

Ontario Water Resources Act
Penalties

	Level I -basic offence -s. 67	Level II -discharge -likely or actual damage -s. 68	Level III -hazardous or liquid waste -potential damage -EPA s. 147	Level IV -hazardous or liquid waste -actual damage -EPA s. 147
Individual first offence minimum	n/a	n/a	\$2000	\$2000
Individual first offence maximum	\$10,000	\$10,000 plus 1 year	\$10,000 plus 1 year	\$50,000 plus 1 year
Individual subsequent offence minimum	n/a	n/a	\$4000	\$4000
Individual subsequent offence maximum	\$25,000	\$25,000 plus 1 year	\$25,000 plus 1 year	\$100,000 plus 1 year
Corporation first offence minimum	n/a	\$2000	\$2000	\$2000
Corporation first offence maximum	\$50,000	\$100,000	\$100,000	\$1,000,000
Corporation subsequent offence minimum	n/a	\$4000	\$4000	\$4000
Corporation subsequent offence maximum	\$100,000	\$200,000	\$200,000	\$2,000,000

See also: s. 70 - forfeiture of monetary benefit
s. 71 - order to restore environment
s. 72 - suspension for non-payment
s. 73 - Director obligations

Ontario Water Resources Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Water Injunction (OWRA s. 15(3))

Act: OWRA s. 15(3)

Issued By: Ontario Court (General Division)

Issued To: person polluting water

Conditions Precedent: Minister applies to court

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require proof that the pollution will have very serious environmental effects if not stopped.

Authorized Content: The court can prohibit discharge for up to 21 days and can impose such terms and conditions as the judge considers proper. The order may be renewed upon application to the court.

Remarks:

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Sewage Discharge Order (OWRA s. 17(1))

Act: OWRA S. 17(1)

Issued By: Director (Regional Director)

Issued To: person responsible for discharge of sewage to water

Conditions Precedent: discharge of sewage to well, lake, river or other water or watercourse

Required Reasons: as above

Authorized Content: prohibit or regulate discharge

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order for Preventative Measures (OWRA s. 18)

Act: OWRA s. 18

Issued By: Director (Regional Director)

Issued To: municipality or industrial or commercial enterprise that may cause impairment of water quality

Conditions Precedent: possibility of impairment of water quality

Required Reasons: in public interest

Authorized Content: to monitor, study and report, to have available the equipment, chemicals and materials specified to alleviate the effects of any impairment

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Water Taking Permit (OWRA s. 20)

Act: OWRA ss. 20

Issued By: Director (Regional Director, named Regional staff--except subsections (4) and (7))

Issued To: --person taking over 50,000 litres of water per day,
or,
--person required by Director to obtain permit because
his or her taking interferes with a public or private
interest in water

Conditions Precedent: none

Required Reasons: none

Authorized Content: Director may in his discretion issue, refuse to issue or cancel a permit, may impose such terms and conditions in issuing a permit as he or she considers proper and may alter the terms and conditions of a permit after it is issued.

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Regulate Water Diversion (OWRA s. 20(7))

Act: OWRA s. 20(7)

Issued By: Director (Regional Director)

Issued To: owner or person who is responsible for
--the flowing or leaking of water from a well,
or
--the diversion, flowing or release of water from
or by means of a hole or excavation made in the
ground for any purposes other than the taking of
water

Conditions Precedent: flowing or leaking, etc., interferes with
any public or private interest in any water

Required Reasons: as above

Authorized Content: stop or regulate flowing, leaking, etc.

Remarks: Standard procedures for issuance and appeal (see page
52).

Ontario Water Resources Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Well Permit (OWRA s. 22)

Act: OWRA ss. 22, 22a, 22b

Issued By: Director (Regional Director, Director Water Resources Branch, and also from Water Resources Branch the Manager--Drinking Water Section and the Senior Water Well Inspector)

Issued To: person wishing to construct well in designated area

Conditions Precedent: non-compliance with Act or regulations, adverse effects, interference with water quantity

Required Reasons: as above

Authorized Content: Terms and conditions may be imposed in a new or existing permit, or a new permit may be refused, or an existing permit revoked or not renewed.

Remarks: As of December 4, 1990, no such area has yet been designated and these permits are not required.

Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Well Contractor Licence (OWRA s. 22c)

Act: OWRA ss. 22c, 22d, 22e, 22f

Issued By: Director (Director of Water Resources Branch, and also from Water Resources Branch the Manager--Drinking Water Section and the Senior Water Well Inspector)

Issued To: person in the business of constructing wells

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused, revoked, not renewed or suspended for dishonesty, incompetence, gross negligence, likely non-compliance with Act or regulations, false statements, or fraud.

Remarks: There is no authority to impose terms and conditions on well contractor licences. Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Well Technician Licence (OWRA s. 22g)

Act: OWRA ss. 22g, 22h, 22i, 22j

Issued By: Director (Director of Water Resources Branch, and also from Water Resources Branch the Manager--Drinking Water Section and the Senior Water Well Inspector)

Issued To: person (an individual; not a corporation) who works at the construction of wells

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused, not renewed, revoked or suspended for incompetence, gross negligence, non-compliance with relevant portion of Act or regulations, or false statements.

Remarks: There is no authority to impose terms and conditions on well technician licences. Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used in emergency)

Name: Interim Order (OWRA s. 22-1)

Act: OWRA s. 22-1

Issued By: Environmental Appeal Board

Issued To: Director (Water Resources Branch, Manager--Drinking Water Section, Senior Water Well Inspector) and applicant for or holder of well permit, well contractor licence or well technician licence

Conditions Precedent: This order is available in urgent circumstances, only when the Director is about to refuse to issue or renew, revoke, or suspend or impose terms and conditions on a well permit, well contractor licence or well technician licence (s. 22k).

Required Reasons: The Director must apply to the Board and satisfy the Board that the order is necessary for the protection of the public or of any member of the public.

Authorized Content: The Board may order that the Director can immediately carry out his or her proposal under s. 22k even though an appeal is pending; in other words, although the action of the Director is usually stayed pending an appeal (i.e. it does not take effect until after the appeal is over), with this order the stay is lifted and it takes effect immediately.

Remarks:

*Ontario Water Resources Act***CONTROL DOCUMENT - Approval (used to achieve abatement)**

Name: Water Works Approval (OWRA s. 23)

Act: OWRA s. 23

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use; however, the persons mentioned so far are not Directors for subsections (6), (7) and (8); this is reserved to the Regional Directors, whose authority under this section extends only to subsections (6), (7) and (8))

Issued To: owner or operator of water works

Conditions Precedent: none

Required Reasons: in the public interest

Authorized Content: Terms and conditions may be imposed in a new or existing approval, or a new approval may be refused, or an existing approval revoked or suspended.

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Unapproved Water Works (OWRA s. 23(3))

Act: OWRA s. 23(3)

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use)

Issued To: person establishing water works without approval

Conditions Precedent: as above

Required Reasons: as above

Authorized Content: afford facilities to Director to investigate unapproved works (e.g. dig them up, carry out tests, provide as-built drawings, etc.) and make such changes in works as necessary

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Direction to Maintain Water Works (OWRA s. 23(7))

Act: OWRA s. 23(7)

Issued By: Director (Regional Director)

Issued To: owner or operator of water works

Conditions Precedent: none

Required Reasons: none

Authorized Content: works to be maintained, kept in repair and operated in such manner and with such facilities as directed

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Sewage Works Approval (OWRA s. 24)

Act: OWRA ss. 24, 25, 26, 27

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use, also the Regional Director, but limited to gravity-type oil-water separators)

Issued To: owner or operator of sewage works

Conditions Precedent: none

Required Reasons: in the public interest

Authorized Content: Terms and conditions may be imposed in a new or existing approval, or a new approval may be refused, or an existing approval revoked or suspended.

Remarks: Standard procedures for issuance and appeal (see page 52).

When an **approval** is **applied for**, depending on the circumstances, a hearing may be mandatory or may be required at the discretion of the Director.

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Unapproved Sewage Works (OWRA s. 24(3))

Act: OWRA s. 24(3)

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use, also the Regional Director, but limited to gravity-type oil-water separators)

Issued To: person establishing sewage works without approval

Conditions Precedent: as above

Required Reasons: as above

Authorized Content: afford facilities to Director to investigate unapproved works (e.g. dig them up, carry out tests, provide as-built drawings, etc.) and make such changes in works as necessary

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Direction to Maintain Sewage Works (OWRA s. 32)

Act: OWRA s. 32

Issued By: Director (Regional Director)

Issued To: owner or operator of sewage works

Conditions Precedent: none

Required Reasons: none

Authorized Content: works to be maintained, kept in repair and operated in such manner and with such facilities as directed

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Report Respecting Sewage Works or Water Works (OWRA s. 33)

Act: OWRA s. 33

Issued By: Director (Regional Director)

Issued To: clerk of a municipality

Conditions Precedent: The Director must report in writing that he or she is of the opinion that it is in the public interest that water works or sewage works be established, enlarged, repaired, etc.

Required Reasons: as above

Authorized Content: may contain specific measures required

Remarks: This report takes away any need for the municipal council to obtain the assent of the electors for any necessary expenditures. The council must do everything possible to implement the report within time specified. Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order -- Public Water or Sewage Service Area (OWRA s. 43)

Act: OWRA s. 43

Issued By: Director (Executive Director--Approvals and Engineering Division, and the following people from Approvals Branch: the Director; the Assistant Director; the Manager--Industrial; the Manager--Municipal; and the Manager--Land Use, also, André Castel and Clem Mialkowsky)

Issued To: all those affected

Conditions Precedent: none

Required Reasons: in the public interest

Authorized Content: This order designates an area of public water service or public sewage service and may also impose terms and conditions, fix and impose rates, terminate existing contracts, etc.

Remarks: An EA Board hearing is required. There is an appeal to the Lieutenant Governor in Council (s. 43(7)) or as provided in s. 6b.

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Pay for Work Done By Ministry (OWRA s. 48e)

Act: OWRA s. 48e

Issued By: Director

Issued To: person to whom a previous control document was issued

Conditions Precedent: when work required by a previous control document is done by the Ministry, as directed by the Minister or Director, the Director may order the person to whom the previous control document was issued, to pay the Ministry's costs

Required Reasons: as above

Authorized Content: itemized statement of costs; remittance to be made to Treasurer of Ontario

Remarks: not a true control document, because the abatement has previously been achieved; complementary to a control document

Please see additional information above under the heading, *Ontario Water Resources Act*: Notes and General Considerations, page 52.

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Sewage Disposal Order (formerly R and D) (OWRA s. 51)

Act: OWRA s. 51

Issued By: Director (Regional Director)

Issued To: any industrial or commercial enterprise which makes unsatisfactory arrangements or no arrangements for the collection, treatment and disposal of its sewage

Conditions Precedent: as above

Required Reasons: as above

Authorized Content: investigations, the submission of reports, the installation, operation and maintenance of treatment and disposal facilities

Remarks: Standard procedures for issuance and appeal (see page 52). This control document was formerly called a Requirement and Direction.

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Order to Stop Discharge into Sewers (OWRA s. 52)

Act: OWRA s. 52

Issued By: Director (Regional Director)

Issued To: person discharging sewage into sewage works or possibly to owner or operator of sewage works who permits discharge

Conditions Precedent: Director believes discharge may interfere with the proper operation of a sewage works

Required Reasons: as above

Authorized Content: discharge to be stopped or regulated and such other measures as required

Remarks: Standard procedures for issuance and appeal (see page 52).

Ontario Water Resources Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction or Restraining Order (OWRA s. 56(1))

Act: OWRA s. 56(1)

Issued By: Court

Issued To: person contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: Minister applies to court

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require proof of previous convictions for the same thing, or strong evidence of previous contraventions with a very good explanation of why they were not prosecuted, or proof that the current contravention will have very serious environmental effects if not stopped.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks:

Ontario Water Resources Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction (after conviction) (OWRA s. 56(2))

Act: OWRA s. 56(2)

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: The convicting court on its own or at the request of the prosecutor may prohibit continuation or repetition of offence.

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require strong evidence of likelihood of repetition or continuation of offence.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks: May be referred to as a "restraining order".

Ontario Water Resources Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Restoration Order (OWRA s. 71)

Act: OWRA s. 71

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: The convicting court on its own or at the request of the prosecutor may order the person to prevent, decrease or eliminate the effects of the offence, and to restore the environment. The court may order other conditions to prevent similar unlawful conduct or to contribute to rehabilitation.

Remarks: The order cannot be in force for more than one year.

Ontario Water Resources Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Licence Order (OWRA s. 72)

Act: OWRA s. 72

Issued By: Court

Issued To: person convicted of offence under the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations under any of them

Conditions Precedent: If a person convicted has not paid the fine, the Director may apply to the court for an order.

Required Reasons: as above

Authorized Content: The court may make an order under s. 70(2) of the *Provincial Offences Act*, directing suspension or non-issuance of a "licence". "Licence" includes an EPA licence, a Part V certificate of approval, an OWRA licence or permit, or a PA licence or permit.

Remarks:

Ontario Water Resources Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Direction to Abandon a Well (OWRA O. Reg. 612/84)

Act: OWRA O. Reg. 612/84

Issued By: Director (Regional Director and named Regional staff, Director Water Resources Branch, and also from Water Resources Branch, Manager--Drinking Water Section and Senior Water Well Inspector)

Issued To: well owner

Conditions Precedent: well producing natural gas or well constructed contrary to regulation

Required Reasons: as above

Authorized Content: direction to abandon well as specified in s. 21(1) of regulation

Remarks: The Director's discretion to require or not require abandonment applies only in the circumstances mentioned above. Where the well is dry, is not being maintained for use or is not producing potable water, the owner is required by the regulation to abandon the well, and it is not necessary for the Director to issue anything.

Pesticides Act

Notes and General Considerations

Crown: The provisions of the Act are binding on the Crown (PA s. 25).

Environment: PA deals with the environment, in other words, the natural environment as in the EPA, **plus** buildings, structures, machines and vehicles.

Index Record: All orders are to be recorded in an alphabetical index and the Ministry must search the index for the public on request (PA s. 24).

Successors: All orders are binding on successors and assignees (PA s. 24). Licences and permits are not transferable (PA s. 26).

Inspections: It is a condition of every licence or permit that the holder must allow a provincial officer to carry out inspections under EPA, OWRA and PA (PA s. 19g).

Immunity: None.

"Statute of Limitations": A prosecution for contravention of the *Pesticides Act* or the regulations may not be commenced later than two years after the date of the offence (PA s. 34f). A number of offences are "continuing offences", in other words, each day the wrongful practice continues is a new offence. For instance, each day a person operates an extermination business without the appropriate licence, constitutes a new offence.

Procedure for Control Documents: An order of the Director or terms and conditions imposed by the Director or a revocation, suspension or refusal to issue may be appealed to the Environmental Appeal Board and subsequently to the Divisional Court on a question of law and to the Minister on any other matter. The procedure for service, advising of appeal rights and for the appeal, is mostly in sections 13, 14 and 15. Generally speaking, apart from emergencies, the giving of notice of intention to issue a control document is required by the principles of natural justice and administrative law even where not specifically required by the statute (see PA s. 13 which does require notice).

Where it is the Minister who is authorized to issue an order, there is no appeal provided in the statute. Because there is no appeal, the requirements of natural justice for notice and an opportunity to make submissions are particularly important. The

Minister's action could be challenged by judicial review application to the courts; this is a fundamental challenge of the right to do something and generally results in a yes or no decision, not a compromise nor a fine-tuning of the document. Judicial review is also available to challenge an order or decision of a Director, but this approach is less likely to be used, because a simpler appeal is provided.

Emergencies: Special provisions are made to deal with emergencies using a Stop Order (PA s. 20) or any other control document (PA s. 13(7)).

Work Done By Ministry: Where the Minister or Director orders that something be done, the Minister may order that, in default of it being done by the person ordered to do it, it shall be done at his or her expense and the Minister can sue to recover the costs (PA s. 32).

Public Notice: The Compliance Policy stipulates that the minimum form of public notification for a control document will be the provision of copies to the local MPP and to the clerks of the appropriate local municipality and upper-tier municipality.

Service of Documents: Formal service of documents is intended to,

- either a) put a document into the hands of the person it is intended for;
- or b) represent a reasonably diligent attempt to put a document into the hands of the person it is intended for (even though the attempt may fail or is known to have failed);
- and c) allow the person serving the document to prove what he or she has done and rely on the fact of service as a firm foundation for any subsequent steps.

The *Pesticides Act* provides that a document is sufficiently served if delivered personally or mailed by registered mail to the person at the latest address shown on Ministry records. Service by registered mail is deemed to take place on the fifth day after mailing, unless the person can prove that he or she did not actually receive the document until later, through no personal fault (PA s. 31). In many cases it is prudent to send an additional copy by ordinary mail, because delivery is not delayed by the mail carrier's attempts to get a signature for delivery.

Caution: The discussion in this document of abatement tools founded in statute, is necessarily general and deals only with the statute as it exists at the time of writing. The advice of a

lawyer is required as to matters of detail and as to the law applicable when a statute is amended.

Pesticides Act
Penalties

	Level I -basic offence -s. 34a	Level II -discharge -likely or actual damage -s. 34c
Individual first offence minimum	n/a	n/a
Individual first offence maximum	\$10,000	\$10,000 plus 1 year
Individual subsequent offence minimum	n/a	n/a
Individual subsequent offence maximum	\$25,000	\$25,000 plus 1 year
Corporation first offence minimum	n/a	\$2000
Corporation first offence maximum	\$50,000	\$100,000
Corporation subsequent offence minimum	n/a	\$4000
Corporation subsequent offence maximum	\$100,000	\$200,000

See also: s. 34b - forfeiture of monetary benefit
s. 34d - order to restore environment
s. 34e - suspension for non-payment
s. 34g - Director obligations

Pesticides Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Exterminator's Licence (PA s. 5(1))

Act: PA ss. 5(1) and 11

Issued By: Director (Director of Approvals Branch, Assistant Director of Approvals Branch, Manager--Industrial Approvals of Approvals Branch, Onderdonk, Michalowicz, Poff)

Issued To: person (an individual; not a corporation) who performs exterminations

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused, not renewed, revoked or suspended for incompetence, gross negligence, non-compliance with licence conditions (in regulation) or with Act or regulations, fraud, dishonesty, lack of equipment or facilities.

Remarks: There is no authority to impose terms and conditions on individual exterminator's licences, only general conditions in regulation. Standard procedures for issuance and appeal (see page 82).

Pesticides Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Operator's Licence (PA s. 5(2))

Act: PA ss. 5(2) and 11

Issued By: Director (Director of Approvals Branch, Assistant Director of Approvals Branch, Manager--Industrial Approvals of Approvals Branch, Onderdonk, Michalowicz, Poff)

Issued To: operator of extermination business

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused, not renewed, revoked or suspended for incompetence, gross negligence, non-compliance with licence conditions (in regulation) or with Act or regulations, fraud, dishonesty, lack of equipment or facilities.

Remarks: There is no authority to impose terms and conditions on individual operator's licences, only general conditions in regulation. Standard procedures for issuance and appeal (see page 82).

Pesticides Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Vendor's Licence (PA s. 6)

Act: PA ss. 6, 11 and 27

Issued By: Director (Director of Approvals Branch, Assistant Director of Approvals Branch, Manager--Industrial Approvals of Approvals Branch, Onderdonk, Michalowicz, Poff)

Issued To: person who sells or transfers pesticides

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A licence may be refused, not renewed, revoked or suspended for incompetence, gross negligence, non-compliance with licence conditions (in regulation) or with Act or regulations, fraud, dishonesty, lack of equipment or facilities.

Remarks: There is no authority to impose terms and conditions on individual vendor's licences, only general conditions in regulation. Standard procedures for issuance and appeal (see page 82).

Under s. 27, the Director may grant an exemption from the requirement to obtain this licence and may impose terms and conditions.

Pesticides Act

CONTROL DOCUMENT - Approval (used to achieve abatement)

Name: Extermination Permit (PA s. 7)

Act: PA ss. 7 and 11

Issued By: Director (Director of Approvals Branch, Assistant Director of Approvals Branch, Manager--Industrial Approvals of Approvals Branch, Onderdonk, Michalowicz, Poff)

Issued To: person performing certain exterminations, notably a water extermination or an extermination by means of a Schedule 1 pesticide

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: A permit may be refused or cancelled or terms and conditions may be imposed in issuing or after issuing the permit for incompetence, lack of equipment or facilities, potential adverse effects, other type of control or extermination preferred, proposed extermination unnecessary or ineffective.

Remarks: Standard procedures for issuance and appeal (see page 82).

Pesticides Act

CONTROL DOCUMENT - Order (used in emergency)

Name: Emergency Notice (PA s. 13(7))

Act: PA s. 13(7)

Issued By: Director (Director of Approvals Branch, Assistant Director of Approvals Branch, Manager--Industrial Approvals of Approvals Branch, Onderdonk, Michalowicz, Poff)

Issued To: licence holder or applicant or person responsible

Conditions Precedent: This order is available only when the Director is in the process of refusing or revoking a licence or issuing a control order.

Required Reasons: health or safety of a person is endangered, impairment or immediate risk of impairment of the environment, damage or immediate risk of damage to plant or animal life, failure to have liability insurance

Authorized Content: This order makes the action of the Director effective immediately; it is not stayed on appeal (an order usually does not take effect until any appeal is over; this order does).

Remarks:

*Pesticides Act***CONTROL DOCUMENT - Order (used in emergency)**

Name: Stop Order (PA s. 20)

Act: PA s. 20

Issued By: Director (Onderdonk, Michalowicz, Poff) or Provincial Officer

Issued To: person responsible

Conditions Precedent: health or safety of a person is endangered, impairment or immediate risk of impairment of the environment, damage or immediate risk of damage to plant or animal life caused by dealings with pesticide

Required Reasons: as above

Authorized Content: stop using or dealing with the pesticide immediately, either permanently or for specified period

Remarks: This order may be either written or oral. The person responsible may appeal immediately to the Director any stop order issued by a provincial officer. The Director may vary or confirm.

Pesticides Act

CONTROL DOCUMENT - Order (used to achieve abatement)

Name: Control Order (PA s. 21)

Act: PA s. 21

Issued By: Director (Onderdonk, Michalowicz, Poff)

Issued To: person responsible

Conditions Precedent: when the use or other dealing with a pesticide may result in adverse effects

Required Reasons: as above

Authorized Content: limit or prohibit the discharge of pesticide or regulate the use or other dealing with the pesticide

Remarks: Standard procedures for issuance and appeal (see page 82).

*Pesticides Act***CONTROL DOCUMENT - Order (used to achieve abatement)**

Name: Order to Repair Damage (PA s. 23)

Act: PA s. 23

Issued By: Minister

Issued To: person responsible

Conditions Precedent: discharge of pesticide causes or is likely to cause injury or damage to environment, property, water, plant or animal life or a person

Required Reasons: in the public interest

Authorized Content: all steps necessary to prevent or repair the injury or damage or restore the quality of the environment

Remarks: There is no appeal of an order issued by the Minister.

Pesticides Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction or Restraining Order (PA s. 37(1))

Act: PA s. 37(1)

Issued By: Court

Issued To: person contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: Minister applies to court

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require proof of previous convictions for the same thing, or strong evidence of previous contraventions with a very good explanation of why they were not prosecuted, or proof that the current contravention will have very serious environmental effects if not stopped.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks:

Pesticides Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Injunction (after conviction) (PA s. 37(3))

Act: PA s. 37(3)

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: The convicting court on its own or at the request of the prosecutor may prohibit continuation or repetition of offence.

Required Reasons: An injunction is an extraordinary remedy which the court will not grant lightly. The court will likely require strong evidence of likelihood of repetition or continuation of offence.

Authorized Content: The court orders the person to stop contravening the Act. Failure to stop is contempt of court and can result in jail.

Remarks: May be referred to as a "restraining order".

Pesticides Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Restoration Order (PA s. 34d)

Act: PA s. 34d

Issued By: Court

Issued To: person convicted of contravening Act or regulations or any order, approval, etc. under Act

Conditions Precedent: see below

Required Reasons: see below

Authorized Content: The convicting court on its own or at the request of the prosecutor may order the person to prevent, decrease or eliminate the effects of the offence, and to restore the environment. The court may order other conditions to prevent similar unlawful conduct or to contribute to rehabilitation.

Remarks: The order cannot be in force for more than one year.

Pesticides Act

CONTROL DOCUMENT - Court Order (used to achieve abatement)

Name: Court Licence Order (PA s. 34e)

Act: PA s. 34e

Issued By: Court

Issued To: person convicted of offence under the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act* or the regulations under any of them

Conditions Precedent: If a person convicted has not paid the fine, the Director may apply to the court for an order.

Required Reasons: as above

Authorized Content: The court may make an order under s. 70(2) of the *Provincial Offences Act*, directing suspension or non-issuance of a "licence". "Licence" includes an EPA licence, a Part V certificate of approval, an OWRA licence or permit, or a PA licence or permit.

Remarks:

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